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In re Application of
Bargain *et al*
U.S. Application No.: 10/590,485
PCT No.: PCT/US2005/005597
Int. Filing Date: 24 February 2003
Priority Date: 25 February 2004
Attorney Docket No.: 049411-0340
For: DETECTION OF RESONATOR
MOTION USING PIEZORESISTIVE
SIGNAL DOWNMIXING

DECISION

This decision is in response to applicants' renewed petition under 37 CFR 1.47(a) filed 18 January 2008.

BACKGROUND

On 11 January 2008, a decision dismissing applicants' petition under 37 CFR 1.47(a) was mailed. Applicants were given two months to respond.

On 18 January 2008, applicants filed the subject response which was accompanied by, *inter alia*, a declaration of Karen Walker and documentary evidence of internet/telephone searches and a copy of a postal receipt.

DISCUSSION

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventors cannot be located or refuse to cooperate; (3) a statement of the last known addresses of the nonsigning joint inventors; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventors. Items (2) and (4) were not satisfied in the initial petition filed 26 November 2007.

Regarding item (2), petitioners did not provide evidence showing that an attempt was made to locate Mr. Young using the internet and telephone directory to search for his address and/or telephone number.

In the renewed petition applicants have provided sufficient evidence that a search was conducted to locate the nonsigning inventor to no avail. Applicants also provided a copy of a postal receipt for documents previously filed on 16 November 2007 and discussed in the initial petition filed 26 November 2007.

A review of the postal receipt for the documents mailed 16 November 2007 is inconclusive whether Mr. Young received these documents. Nonetheless, a copy of the subject application as filed was included with the 16 November 2007 correspondence along with a copy of the declaration and assignment.

If Mr. Young received this correspondence, the lack of reply would constitute a refusal as outlined in section 409.03(d) of the MPEP. If Mr. Young was not the person receiving these documents, petitioners have met the requirements to satisfy the 'diligent effort' requirement of section 409.03(d) of the MPEP where an inventor cannot be located.

Item (2) of 37 CFR 1.47(a) is now satisfied.

Concerning item (4), the declaration filed in the initial petition was not accepted because a non-initialed, non-dated alteration was on the declaration signed by co-inventor Jessica Arlett. Applicants were requested to provide a new declaration executed by Ms. Arlett.

In the renewed petition, applicants argue that "Ms. Arlett made the alteration to the Declaration, correcting her residence to South Pasadena, California, and then signed and dated the Declaration in the spaces provided immediately below." As such, the requirement for an alteration to be signed on the same sheet of paper has been met pursuant to 37 CFR 1.52(c)(1). This argument is rejected.

The Office will not consider whether applicants made the changes in the declaration before signing the declaration, if the changes are not initialed. A new declaration is required.

As stated in section 605.04(a) of the MPEP:

Any changes made in ink in the application or oath prior to signing should be initialed and dated by the applicants prior to execution of the oath or declaration. **The Office will not consider whether noninitialed and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration.**

For this reason, item (4) of 37 CFR 1.47(a) is still not satisfied.

CONCLUSION

For the reason discussed above, applicants' renewed petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. No additional petition fee is required.

Any further correspondence with respect to this matter may be filed electronically via the USPTO EFS-Web or if mailed addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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